

Testimony of

JAMES M. PATES

**City Attorney
Fredericksburg, Virginia
on behalf of the**

NATIONAL PIPELINE REFORM COALITION

**before the
U. S. Senate Committee on
Commerce, Science & Transportation**

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Mr. Chairman and Members of the Committee:

My name is Jim Pates and I serve as City Attorney of the City of Fredericksburg, Virginia. I am appearing today as Vice-President of the National Pipeline Reform Coalition (ANPRC@), a national pipeline safety advocacy organization consisting of individuals, state and local governments, citizens groups, environmental organizations, pipeline accident victims, and businesses committed to promoting pipeline safety reform in the United States. We are a new and growing organization, having been formed in 1998 in response to numerous oil and gas pipeline accidents across the country and efforts by pipeline companies to construct new pipelines without adequate public safety and environmental safeguards. We recently sponsored our first national conference here in Washington and were pleased to see how well attended it was and how many national organizations are supporting our efforts to secure meaningful pipeline safety reform.

Introduction

I would first like to thank the Chairman, Senator McCain, and Senator Hollings for being permitted to speak here today. All too often, the Pipeline Safety Act (AAct@) has been the subject of Congressional hearings and reauthorization proceedings that have not included input from public interest organizations, local governments, or victims who have personally suffered from pipeline accidents. You are to be commended for your willingness to hear from these families today. We thank you for including the NPRC and hope that our comments will be received in the same spirit in which they are offered, that is, simply, to improve pipeline safety regulation in this country.

The NPRC exists for one simple reason. Communities and individuals that have either experienced pipeline disasters or who have sought assurances that new pipelines will be constructed in a safe and environmentally sound manner have discovered, to their dismay, that our federal laws and the agencies charged with enforcing them, particularly the Office of Pipeline Safety, U. S. Department of Transportation (AOPS@), do not adequately protect the public interest.

You have heard today from the people of the State of Washington, who have suffered one of the worst pipeline accidents within the past decade. But please don't think that their story is an isolated case. There have been many other similar accidents, most of which you are probably unaware. For example:

1. Greenville, South Carolina - Shortly before midnight on June 26, 1996, an interstate oil pipeline ruptured along the Reedy River near Greenville, South Carolina, spilling almost a million gallons of diesel fuel into the river. For hours, fuel poured into the river, killing an estimated 34,000 fish and other wildlife and threatening public water supplies before an emergency crew of 500 workers could stanch the flow. By the time the leak was stopped the next day, the pipeline's owner, Colonial Pipeline Company, and the state of South Carolina had each experienced their largest oil spills in history. The state Department of Natural Resources later catalogued 23 fish species that had been decimated, including catfish, largemouth bass, suckers, shad, carp, bullhead, and warmouth, as well as turtles, muskrat, snakes, crawfish, and wood ducks.

2. Kemp, Texas - Two months later, on August 24, 1996, in the small town of Kemp, Texas, about 50 miles southeast of Dallas, a transmission pipeline carrying liquid butane ruptured, creating a massive cloud of foul-smelling gas. Two teenagers, Jason Stone, 17, and Danielle Smalley, 18, jumped into their pickup truck to warn others. Sparks from the engine ignited the highly flammable gas, causing an explosion that sent a fireball into the air visible from 40 miles away. Both teenagers were killed.

3. San Bernardino, California - In May 1989, a Southern Pacific train derailed in San Bernardino, plowing through a residential neighborhood and killing four people. The train landed on top of a pipeline operated by Calnev Pipeline Company, an interstate carrier that transports petroleum from California to Nevada. Thirteen days after the train derailment and train service had been restored, the pipeline exploded in the same location. The flames rose 500 feet in the air. Two people were killed, 10 homes destroyed, and dozens of people injured.

4. Fredericksburg, Virginia - In 1980 and again in 1989, my hometown of 20,000 people lost its public water supply for a week due to oil spills in the Rappahannock River. Both emergencies were caused by the failure of an interstate oil pipeline operated by Colonial Pipeline Company. The first accident resulted in 92,000 gallons of fuel oil spilling into a tributary of the river, the City's sole water source. Nine years later, it happened again, with 212,000 gallons of kerosene flowing into the river. Both accidents took place 20 miles upstream of the city's water intake. Each time, fish and wildlife were killed, businesses were forced to close, and the city had to haul water from neighboring jurisdictions.

5. Houston, Texas - On October 20, 1994, Houston's San Jacinto River, swollen by heavy rains and flooding, gouged a new channel through the floodplain and exposed 17 underground pipelines. Four of them broke. Gasoline from Colonial's 40-inch line ignited, sending flames down the river and destroying houses, trees, and barges. As it was like hell had opened up and swallowed the whole river, @ said Mike Norman, 34, who witnessed the explosion.

6. Mounds View, Minnesota - At 4 o'clock in the morning on July 8, 1986, a gasoline pipeline owned by Williams Pipeline Company ruptured in the small town of Mounds View, sending vaporized and liquid gasoline into the streets of a residential neighborhood in this suburb of Minneapolis. Twenty minutes later, an automobile passed by, causing the gasoline to ignite. Two people were burned to death while fleeing their home. When the City of Mounds View attempted to delay the pipeline from resuming operations until local safety concerns had been met, company officials went to court and secured a permanent injunction blocking the city from taking any action that might restrict their operations.

Since 1990, there have been nearly 4,000 incidents reported to OPS involving gas and hazardous liquid pipelines, - more than one every single day. These incidents have resulted in over 200 deaths, nearly 3,000 injuries, and at least \$780 million in reported property damage. Over 62 million gallons of oil and other hazardous liquids have been released into the environment over the past 10 years, making oil pipeline accidents one of the largest point sources of oil pollution in the country. It is not a record of which any of us should be proud.

Reauthorization of the Pipeline Safety Act

This year, we see history repeating itself.

For those of us who have been involved in pipeline safety reform efforts for years, we recognize a familiar pattern unfolding. For the past several years, there has been little discussion on a national level about pipeline safety because there have been only one or two high-profile accidents. During this time, the Office of Pipeline Safety and the pipeline industry have worked together quietly to avoid any regulatory measures which would place any new requirements on pipeline operators or reduce industry profits. In fact, they have been busy trying to reduce state and federal regulation of pipelines generally.

But then along comes an accident such as the one in Bellingham and the public demands action. Congress responds

by directing OPS to devise tougher standards, by imposing deadlines for agency action, by granting OPS additional enforcement authority, and by increasing the agency's budget.

Then several more years pass, during which time OPS conducts studies (generally funded and directed by the industry) and determines that no new standards are actually needed or that compliance with them should be strictly voluntary. It ignores the deadlines set by Congress and uses its increased funding to pursue deregulation of the industry.

Then another tragic accident occurs and the process repeats itself. Throughout such cycles, very little actually changes and preventable accidents continue to plague unsuspecting communities and individuals who happen to live near dangerous transmission pipelines.

We hope this year will somehow be different. As you know, there are at least four different bills that have recently been introduced as a result of the Bellingham accident. The NPRC has reviewed all four of these bills and believes that all of them contain useful provisions. We would urge the Committee, however, to take advantage of this narrow window of opportunity and to delve deeply into the serious problems that plague OPS, to ask some hard questions, and not to accept glib bureaucratic answers at face value.

We urge you to focus on three fundamental issues in formulating this legislation:

ISSUE #1: THERE ARE INSUFFICIENT FINANCIAL INCENTIVES FOR OPERATORS TO PREVENT ACCIDENTS.

PIPELINE

Under current law and federal enforcement policy, there is little financial incentive for pipeline companies to take the actions needed to reduce the risk of serious accidents. Unless an accident results in deaths or calamitous environmental damage to surface waters, pipeline operators generally face no fines or penalties at all for accidents that they could have prevented altogether or that could have ended tragically. Even when state or federal authorities do seek penalties for oil spills under the Oil Pollution Act of 1990, the Clean Water Act, or other state statutes, the penalties and remedies are related to *environmental damage* and *remediation*, not to public safety, pipeline design, operation, or maintenance. **In other words, the symptoms or effects of pipeline accidents get treated, but not the disease itself.**

The Office of Pipeline Safety already has considerable enforcement authority but they have deliberately chosen not to use it. Under current law, OPS has the power to impose civil money penalties up to \$25,000 per day per violation (up to a maximum fine of \$500,000), to obtain injunctive relief and punitive damages against operators, and to seek criminal penalties for willful violations. The agency can also utilize a special statutory remedy called a Hazardous facility order, which allows OPS to find that a pipeline or other facility is either

- (1) hazardous to life, property, or the environment; or
- (2) constructed or operated, or a component of the facility is constructed or operated, with equipment, material, or a technique the Secretary [of Transportation] decides is hazardous to life, property or the environment.

Unfortunately, these enforcement tools are rarely used. From 1987 to 1989, for example, at a time when over 33 million gallons of petroleum were spilled in 580 separate accidents, OPS collected fines of only \$188,000. That adds up to less than five cents per gallon spilled.

Both S. 2438 and the Administration's bill contain provisions increasing potential civil penalties under current law from \$25,000 to \$100,000 per violation. While such increased penalties are helpful, OPS's track record strongly suggests that such enhanced penalties will never be used.

Rather than relying solely on such discretionary penalties, the NPRC strongly encourages the Committee to look to the Oil Pollution Act of 1990 as a model for providing stronger financial incentives for pipeline companies to act on their own to adopt operational practices that will reduce the likelihood of catastrophic accidents.

Specifically, we recommend that S. 2438 be amended to include mandatory fines for gas and hazardous liquid pipeline releases that exceed a minimum threshold amount or when fatalities are involved, without regard to fault. Pipeline operators would be authorized to recover these mandatory fines from third parties if such persons were actually responsible for a release. Repeat offenders would face even stiffer statutory penalties.

In addition, we suggest that the Committee consider enhancing the citizens suit provisions under current law. The Act now provides that any person can file suit against OPS or a pipeline operator for violations under the Act. Congress intended for this section to serve as a powerful incentive to ensure compliance with the law. Unfortunately, the citizens suit provision has not worked.

We are unaware of a single instance where anyone has been able to bring a successful citizens suit under the Pipeline Safety Act. The reason for this is that the Act bars any person from bringing a citizens suit so long as the agency is diligently pursuing an Administrative proceeding@ to correct the violation. This section should be amended to bring it more into line with other federal statutes, which provide that violators are shielded from citizens suits only if they are already under judicial supervision.

Finally, we would recommend that a Awhistle blower@ provision be added to the statute to protect pipeline company employees who report pipeline safety violations. We hear of instances where pipeline company employees fear for their jobs if they report violations to state or federal officials. Such laws have proven helpful in other areas by protecting lower level employees who recognize and seek to correct their employer=s unlawful conduct.

ISSUE #2 - OPS HAS CONSISTENTLY DISREGARDED CONGRESSIONAL MANDATES TO ESTABLISH HIGHER SAFETY STANDARDS, TO PROTECT THE ENVIRONMENT, AND TO PENALIZE OPERATORS WHO VIOLATE THE LAW.

Although we do not yet have a final report from the National Transportation Safety Board on the causes of the Bellingham accident, it will undoubtedly conclude, as its reports have repeatedly found in the past, that a large part of the culpability rests with OPS. As the Committee considers this legislation, we urge you to keep in mind that Congress= past efforts to deal with the shortcomings of OPS have been largely unsuccessful.

As noted earlier, Congress has increased civil penalties in the past but OPS has refused to impose them. The agency has also been derelict in carrying out the major environmental mandate that Congress conferred upon the agency in 1992. As you know, OPS was ordered at that time to incorporate Aprotection of the environment@ into its overall regulatory mission and to establish criteria for identifying pipelines located in high-density population and environmentally sensitive areas. In this way, higher safety standards and environmental protection measures could be applied to high-risk areas. The agency was given two years, until October 24, 1994, to complete the task. **As of today, almost six years after Congress= deadline, no final rule on the high-density population and environmental criteria has been adopted, much less any additional safeguards actually put in place.** There is simply no excuse for such dereliction of duty by OPS.

As noted recently in the Audit Report of the DOT Inspector General (Report No. RT-2000-069, issued March 13, 2000), the Office of Pipeline Safety has failed to respond to, much less carry out, various recommendations of the National Transportation Safety Board, continues to rely on pipeline accident data that is notoriously unreliable, and has failed to conduct research on Asmart pigs@ and other technologies that could detect pipeline problems before they cause accidents.

The list of bureaucratic failings goes on and on. For years, OPS has ignored calls by the NTSB and Congress to set tougher pipeline safety standards. Beginning 20 years ago, in 1980, the NTSB first called upon OPS to require gas pipeline operators to install certain equipment known as Aexcess flow valves@ to isolate failed pipelines after they break, thus reducing the risk of fire and explosion. In 1992, Congress finally required the agency to formulate performance standards for such valves and to determine under what circumstances, if any, they must be installed. Three years later, in 1995, OPS finally concluded that no such valves should be required. Even today, in 2000, no such requirement is in place.

In our opinion, this pattern of neglect shows that OPS, as an agency, needs to be fundamentally restructured or Areinvented.@ Instead of seeing itself as an advocate and protector of the industry, OPS must refashion itself as an advocate and protector of the public interest. To help accomplish this objective, the NPRC recommends that the Committee:

1. Conduct oversight hearings. As NTSB Chairman Jim Hall recently recommended, Congress should

convene a series of oversight hearings into the repeated failure of OPS to carry out Congressional mandates and NTSB recommendations, to evaluate the federal-state regulatory partnership, and to examine the peculiarly close relationship between OPS and the industry it is supposed to be regulating. No such hearing has been held within the past decade and could go a long way toward explaining the real reasons for OPS' ineffectiveness.

2. Mandate tougher safety requirements. We commend the Chairman for including in his bill provisions requiring operators to develop employee qualification and training plans and directing OPS to develop a pipeline integrity management program. We would recommend, however, that these provisions be strengthened and additional ones added to require:

§ that by December 31, 2002, all pipeline operators complete internal inspections of their pipelines and take appropriate corrective action when serious anomalies are discovered;

§ that OPS *mandate* minimum operator qualification and training standards;

§ that operators develop failsafe mechanisms to protect pipelines from over-pressurization in the event of equipment failures or other mishaps;

§ that all liquid pipelines install emergency shut-off valves, with stiffer requirements for pipelines located in environmentally sensitive areas;

§ that pipelines with significant accident histories undergo periodic hydrostatic testing; and

§ that OPS develop leak-detection standards for all pipelines and require operators to utilize such systems.

Many of these issues have been addressed in the past by Congress, NTSB, GAO, and other outside studies, but OPS has either failed to act on them or has been so dilatory in pursuing them that Congress should proceed and set the standards itself.

ISSUE #3 - CONGRESS NEEDS TO ENHANCE, NOT REDUCE, THE ROLE OF STATE AND LOCAL GOVERNMENTS IN PROTECTING THE PUBLIC FROM PIPELINE ACCIDENTS.

As you know, the Pipeline Safety Act envisions that regulation of the design, construction, maintenance and operation of gas and hazardous liquid pipelines should primarily be a federal responsibility. This is appropriate, given the impact of pipelines on interstate commerce. There is an obvious need for uniform standards in our interstate transportation system. But the current law also envisions a strong federal-state partnership in which the federal government sets and enforces national safety standards for interstate pipelines but states may perform day-to-day inspection and administrative duties and can even adopt more stringent safety standards for intrastate pipelines.

Specifically, the Act currently provides that OPS can certify states to assume federal jurisdiction over intrastate pipelines if they have adopted federal standards and do not impose more stringent standards that are *incompatible* with federal standards. Certified states also enjoy full enforcement authority over intrastate operators.

In addition, under a separate program, OPS may designate certified states as its agents to administer the interstate pipeline programs, except that all enforcement authority over interstate facilities remains with OPS. States have been actively encouraged in the past to assume federal responsibilities under both the intrastate and interstate programs through a cost-reimbursement formula that enables them to recover up to fifty percent (50%) of their costs from the federal government.

This bifurcated federal-state regulatory system has produced a confusing regulatory maze. As of 1999, 49 states were certified to implement the intrastate gas program, 9 served as agents to administer the interstate gas program, 4 were permitted to inspect intrastate gas or liquid facilities but not to enforce federal standards, 12 were certified to implement the intrastate liquid program, and 4 served as agents to administer the interstate liquid program. Now OPS has indicated that it intends to phase out the entire interstate agent program within the next several years.

The Office of Pipeline Safety has put forth several rationales for phasing out the interstate agent program, including claims that additional Congressional appropriations for OPS preclude the need for interstate agents and that some states are doing an inadequate job of regulating intrastate pipelines. The NPRC suspects that the real reason for OPS

attempting to **reduce** the states' role in pipeline safety arises from a demonstrated commitment by a number of states, including ones such as Washington, Minnesota, and Virginia, to take a more aggressive approach them on a whole range of issues.

As someone who has been personally involved in this issue from a local government perspective for the past 10 years, I can tell you that the state pipeline regulators with whom I have dealt are far more vigilant in conducting inspections, monitoring new construction, and enforcing regulations than is OPS. As a group, they generally favor tougher safety standards than those approved by OPS and are more willing to take strong enforcement action against recalcitrant operators. Their help should be welcomed, not discouraged.

The Administration, in Section 6 of its bill (S. 2409), has put forward a proposal titled, "Enhanced Ability of States to Oversee Operator Activities." Such a title constitutes a total misrepresentation of what the bill actually does.

Instead of enhancing state authority, it actually **limits** state activities to "special investigations involving new construction or incidents" and to "other activities overseeing interstate pipeline transportation that supplement the Secretary's program and address issues of local concern," provided OPS makes certain findings that such state activities are consistent with "the Secretary's program for inspection." In addition, it would place the imprimatur of Congress on OPS' ongoing efforts to **cancel** the interstate agent agreements already in place. Given OPS' public announcement that it intends to eliminate the entire interstate agent program within three years, how can the Administration's bill possibly state authority?

The NPRC strongly believes that states should be encouraged to assume a much larger role in promoting pipeline safety than is allowed under current law. This should be true for interstate, as well as intrastate, pipeline facilities. There are several reasons for this.

First, the record reflects that states have generally done a better job of carrying out federal regulations affecting intrastate gas and liquid pipelines than OPS has. Several states have gone beyond the minimum federal standards and promulgated their own standards to enhance public safety for intrastate facilities or taken the stronger enforcement actions against violators than OPS ever has. For example, I invite you to look at the record of the Virginia State Corporation Commission in administering the federal program for intrastate liquid pipelines; it far surpasses the track record compiled by OPS prior to Virginia's certification.

Second, each state has unique conditions that may warrant slightly different regulatory standards. For example, states suffering risks from flooding or earthquakes may need different operational or design standards to protect the environment from natural disasters.

Third, states can allocate additional resources and personnel to conduct more rigorous inspections that OPS has been willing or able to do.

The NPRC proposes that S. 2438 be amended to grant states the authority to develop and administer their own pipeline safety programs for interstate pipelines, provided they do not overburden interstate commerce or compromise public safety. OPS would still rightfully be entrusted with primary authority over interstate pipelines but states would be given a legitimate partnership role in protecting the public from pipeline accidents.

Finally, the NPRC would encourage the Committee to include two other measures in S. 2438 to enhance state and local involvement in pipeline safety:

1. Creation of regional advisory councils. The Oil Pollution Act of 1990 provides a model for fostering long-term partnerships among industry, government, and local citizens in monitoring compliance with safety and environmental mandates. Under that statute, Congress established regional advisory committees comprised of local elected officials and other community representatives for the purpose of working with the Alyeska Pipeline Company to promote their mutual goals of reducing oil spills and protecting the environment. By all accounts, the program has been very successful.

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The NPRC urges the Committee to consider extending this concept to pipeline safety by allowing communities interested to form similar regional councils. The membership of the councils would consist of representatives of local government, tribes, property owners, emergency responders, and other interested parties. The governor of the host state would certify each council. The duties of the councils would be purely advisory but

they could provide invaluable assistance on a variety of pipeline safety issues. Federal agencies such as OPS would be required to consult with the councils on issues affecting that state. To ensure technical competency, each council would be assured a continuing source of funding under the statute.

Such a program would, for the first time, create a true partnership among industry, government, and the public on pipeline safety issues. It would provide a vehicle for industry and localities to work *with* each other instead of *against* each other. It would provide a continuity of expertise and local involvement instead of the sporadic public hysteria that often arises out of pipeline accidents or proposals for new pipelines. We believe that such a vehicle could prove to be a constructive means of promoting dialogue on these difficult and technically complex pipeline issues.

2. State and local government study and grants. The NPRC also urges the Committee to amend S. 2438 to require OPS to institute a program aimed at encouraging state and local governments to take a more active role in utilizing their existing legal authority to promote pipeline safety. Most cities and counties in America are largely unaware that large transmission pipelines run through their communities or that such facilities may pose significant threats to their citizens and the environment.

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The fact is that state and local governments can and should play a much larger role in pipeline safety. Local governments largely control land use, both as it affects existing and proposed pipelines, yet few localities adequately address pipelines in their comprehensive land use plans, zoning and subdivision ordinances, or building codes. Even localities such as Fredericksburg and Bellingham that have suffered serious accidents often do not comprehend what sort of risks pipelines pose or how their local laws should restrict human activities near pipelines. They need federal guidelines and technical assistance to help them make such sound, scientifically based, decisions. In addition, few states or localities set minimum easement widths for new pipelines. We see many instances of existing transmission pipelines having been built within rights-of-way that are entirely too narrow. Now, new buildings, schools, hospitals, and homes are being built within 15 or 20 feet of these hazardous facilities. Who=s protecting the hapless people who happen to live and work right next to these facilities?

We urge the Committee to direct the National Research Council to conduct an independent risk assessment study to determine the public safety and environmental risks posed by new and existing transmission pipelines and to develop model standards for easement widths, building setbacks, fire codes, and other measures that state and local governments can use to protect their citizens and the environment.

Mr. Chairman, thank you again for permitting the National Pipeline Reform Coalition to participate in today=s hearing. We have worked very hard, over a very short period of time, to scrutinize these various bills and to formulate our own reform proposals. We look forward to working with you, the Office of Pipeline Safety, the National Transportation Safety Board, the pipeline industry, and other interested parties to reduce the likelihood of accidents such as the one that has devastated and continues to haunt the people of Bellingham. Thank you.

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